IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.103 OF 2001

Dilip Shrawan Kamane,
Now lodged in
Kolhapur Central Prison,
Kalamba, Kolhapur 416007 ...Appellant
(Original accused)

V/s

The State of Maharashtra. ...Respondent.

Mr. R.S. Datar, advocate for the appellant.

Mr. A.S. Shitole, APP for the State.

CORAM: D.G. DESHPANDE &
V.M. KANADE, JJ.

DATE: 28th November, 2005

ORAL JUDGMENT: (Per V.M. Kanade, J.)

1. The appellant - original accused is challenging the judgment and order passed by the District and Sessions Judge in Sessions Case No.109 of 2000. By the said judgement and order dated 19/12/2000, the Sessions Court was pleased to convict the accused for an offence punishable under section 302 of the Indian Penal Code and sentenced him to suffer rigorous imprisonment for life and to pay fine of Rs 2000/- and, in default of payment of fine, to suffer further rigorous imprisonment for three months.

2. The prosecution case, in brief, is that the appellant was married to the deceased Yeshoda 15 years prior to the incident. She had four children out of the marriage, out of which three survived; one was a son and other two were daughters. The appellant was alcoholic and on 19/5/1998, at about 5.00 P.M. there was a quarrel between the husband and wife on a very trifle issue. The accused wanted to take the daughter Balutai with him, whereas Yeshoda wanted to take the other daughter to the hospital as she was not well and she had insisted that the accused should stay in the house. At that point of time, the accused was enraged. He said that he would burn her mouth and, thereafter, in a fit of rage, he took up a Can of kerosene, poured it on his wife Yeshoda who tried to run away from the house. However, the accused lit a match stick and threw it on the person of Yeshoda and as a result of which the deceased Yeshoda caught fire. The accused, however, extinguished the fire with a quilt and, thereafter, ran away. The father of Yeshoda came there and she narrated the incident to him. P.W. 5 - Rupali, wife of the brother of the deceased also came there and the deceased narrated the incident to her. Her father took her to the hospital and Dr. Shinde - P.W.2 admitted her and noted the case history as narrated by the deceased Yeshoda.

Thereafter, P.W. 9 Shinde, P.H.C. recorded the statement of Yeshoda in the presence of P.W. 2 - Dr. Prakash Shinde and Yeshoda again reiterated the facts which were disclosed by her to the other witnesses that her husband had poured kerosene on her and had set her on fire. The FIR was lodged. Thereafter, the panchanama of the scene of offence was made. Yeshoda was shifted to the Civil Hospital, Satara. Thereafter, the Special Executive Magistrate - P.W. 4 recorded the dying declaration of the deceased, after verifying from the doctor that Yeshoda was in a fit condition to give her statement. Yeshoda died due to the burn injuries and an offence under section 302 was registered. The statements of witnesses were recorded by the Investigating Officer. The charge was framed by the Court. The accused pleaded not guilty to the said charge. The trial court, on the basis of the evidence which is brought on record by the prosecution, convicted the accused for the offence punishable under section 302 and sentenced him to suffer rigorous imprisonment for life.

3. We have heard the learned Counsel appearing on behalf of the appellant and the learned APP for the State at length. We have perused the judgment and order of the trial court as also the oral and

documentary evidence which is brought on record.

4. The learned Counsel appearing on behalf of the appellant submitted that the trial court convicted the accused by relying on the dying declarations made by the deceased and, apart from this evidence, there was no other independent evidence to corroborate the dying declarations. He submitted that there were several infirmities and contradictions in the various dying declarations which were made by Yeshoda and, as such, it wold not be safe to rely on these dying declarations for the purpose of convicting the accused. He submitted that there was no evidence to show that the accused was present in the house when the said incident took place. He submitted that the prosecution had not examined other persons who were present and were residing in the locality and, therefore, an adverse inference was liable to be drawn against the prosecution. He relied upon the number of judgments of the Supreme Court in support of the said submissions which shall be considered at the appropriate stage.

5. The learned APP appearing on behalf of the State, on the other hand, submitted that the trial court had properly assessed the evidence on record and

considered the circumstantial evidence which has been brought on record and had found that the various dying declarations were sufficient to convict the accused.

6. The law on the point of dying declaration is quite settled. Section 32(1) of the Evidence Act makes an exception to the general rule and permits the statement made by the person who is lying on the death-bed to be admitted as an evidence if it pertains to and relates to the particular cause of death of that person and also relates to the transaction which had caused the death of that person. The Supreme Court in the case of Khushal Rao Vs. State of Bombay reported in **1958 SC 22**, in which the several dying declarations named the accused as an assailant, upheld the conviction on the basis of dying declarations alone. The Supreme Court observed that no part of the dying declarations had been shown to be false and that no reason to doubt the truth of the dying declarations and their reliability had been pointed out to the Court. In the case of Thurukanni Pompiah and another vs. State of Mysore reported in **AIR 1965 SC 939**, the accused was convicted on the basis of dying declarations of the deceased. In the said case, apart from the dying declarations, the prosecution had also examined four eye witnesses. However, they were

disbelieved by the Court. The names of the two additional accused were mentioned in the subsequent dying declarations. The Supreme Court held that if the Court after examining dying declarations and all its aspects and deciding its veracity comes to the conclusion that it is not reliable by itself and that it suffers from infirmity then, without corroboration, it cannot form the basis of conviction. In the case of Govind Narain and another vs. State of Rajashthan reported in **1993 CRI.L.J. 2598**, the prosecution was based on three dying declarations. There was inconsistency in the first two dying declarations. The Supreme Court held that, in such cases, it was not safe to rely on any of the dying declarations as the testimony was found not to be reliable and was belied by the medical evidence. The Supreme Court further observed that if there are major discrepancies in the dying declarations, all the dying declarations were liable to be discarded.

7. The legal position is, therefore, quite well settled. If the Court, after examining the dying declarations, finds that there are no infirmities in the dying declarations given by the deceased then, on that basis alone, the accused was liable to be convicted. However, if there were infirmities in the

dying declarations and major discrepancies in the statement then, without corroboration, the accused was not liable to be convicted on the basis of such dying declarations.

8. Keeping in view the said settled position in law so far as the law of dying declaration is concerned, it will have to be seen, whether, in the present case, the dying declarations on which reliance is placed by the prosecution can be relied upon. In the present case, the facts are already narrated hereinabove and, therefore, it is not necessary to repeat them again at this stage. The deceased Yeshoda had narrated the facts to her father P.W. 1 - Jagannath, P.W. 5 - Rupali and P.W 6 - Chandrahar Sawant. This fact was also noted by P.W. 2 - Dr. Prakash Shinde who admitted the patient Yeshoda and recorded the case history after making inquiries from Yeshoda. Thereafter P.W. 9 - P.H.C. Shinde recorded the statement of Yeshoda, P.W. 2 - Dr. Prakash Shinde and it was treated as FIR which is at Exhibit-16. The second dying declaration was recorded by P.W.3 - Hanmantrao in the presence of the Medical Officer, General Hospital, Satara who has given his endorsement before the statement was recorded and also after the completion of the recording of the statement. P.W. 3

- Hanmantrao Shinde also obtained a thumb impression of the left foot of the patient Yeshoda and put his signature on the said dying declaration. Thereafter, the dying declaration was recorded by P.W. 4 - Nandkumar Gurav, the Special Executive Magistrate. This statement was recorded on 20/5/1998 and the endorsement has been made by the Medical Officer. Apart from the evidence of these witnesses, there is also other circumstantial evidence in the form of the panchanama of the scene of offence and the statement of P.W. 8 - Dr. Ulhas Marulkar who performed the post-mortem of the deceased Yeshoda.

9. A perusal of the three dying declarations reveals that there is no inconsistency regarding the sequence of events. Deceased Yeshoda had stated that the quarrel began on a trifle incident as to who should stay at home and the accused being angry poured kerosene on her and set her on fire. The learned Counsel appearing on behalf of the appellant has vehemently tried to point out that there was inconsistency in her statements regarding the person who extinguished the fire. In one dying declaration, she has stated that her husband had put a quilt on her and had extinguished the fire whereas, in another statement, she has stated that it was extinguished by

her neighbours. In our view, these are minor inconsistencies and on the basis of such inconsistencies, it cannot be said that the testimony of the dying declarations should be discarded altogether. In order to discard the dying declaration, it has to be shown that there is major discrepancy in the dying declaration. In the present case, on the close scrutiny of the three written dying declarations and the oral dying declarations revealed by P.W.1, P.W.5 and P.W.6, there is absolutely no inconsistency regarding the manner in which the accused set the deceased on fire. P.W. 6 is an independent witness. He also has stated that the deceased had told him the same facts as narrated by her to other witnesses. P.W. 6 - Chandrahar Sawant has stated that he lived at Khatav in Boudh locality and he knew the accused and the deceased Yeshoda. On the day of the incident, he was sitting in the door of his house when a person by name Ramchandra told him that the Yeshoda was burnt. He, therefore, reached there and he saw that Yeshoda was lying on the ground having burn injuries. He asked her as to what had happened and she told him that her husband poured kerosene on her person and had set her on fire. P.W. 6 is an independent witness and he is not relative of Yeshoda and there is no reason why he would make a

false statement. All the written dying declarations are also endorsed by the doctor who has stated that the patient was conscious. All the three written dying declarations are endorsed by the doctor wherein he has stated that the condition of the patient. Therefore, in our view, there is no infirmity or major discrepancy in the three written dying declarations of the deceased Yeshoda. Apart from the dying declarations, the evidence of P.W.1 Jagannath, P.W 5 - Rupali and P.W. 6 - Chandrahar Sawant establishes the sequence of events and also the oral dying declarations which were made by the deceased Yeshoda to these witnesses. Thus, there is a corroboration to the written dying declarations and this is an additional circumstance to show that the deceased died because she was set on fire after the kerosene was poured on her by her husband. The medical evidence also establishes that the deceased Yeshoda died as a result of the burns which were caused to her. P.W. 8 -Ulhas Marulkar who performed the post-mortem of the deceased has given the evidence to that effect. The prosecution, in our view, has established beyond the reasonable doubt that the Yeshoda died by burning her.

10. In the cross-examination also, the defence has not been in a position to shake the evidence of the prosecution witnesses. Though very minor discrepancies have been brought on record, they are not of much significance.

11. In the result, the submissions made by the learned Counsel appearing for the appellant cannot be accepted. The appeal is dismissed. The judgment and order passed by the trial court is confirmed.

D.G. DESHPANDE, J.

V.M. KANADE, J.